



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2021-0307; FRL-10965-02-R3]

Determination of Attainment by the Attainment Date for the 2012 Annual Fine Particulate

Matter Standard; Pennsylvania; Allegheny County Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is determining that the Allegheny County, Pennsylvania, fine particulate matter (PM_{2.5}) nonattainment area (“Allegheny County PM_{2.5} nonattainment area,” “the nonattainment area,” or simply “the area”) attained the 2012 annual PM_{2.5} national ambient air quality standards (NAAQS or “standard”) by its December 31, 2021, “Moderate” area attainment date. This determination, as required under Clean Air Act (CAA) sections 179 and 188, is based upon quality-assured, quality-controlled, and certified ambient air monitoring data for the 2019-2021 period available in EPA’s Air Quality System (AQS) monitoring data repository. The area remains nonattainment for the 2012 annual PM_{2.5} NAAQS until the area is redesignated to attainment.

DATES: This final rule is effective on [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2021-0307. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through www.regulations.gov, or please contact the person identified in the **FOR**

FURTHER INFORMATION CONTACT section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Brian Rehn, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2176. Mr. Rehn can also be reached via electronic mail at rehn.brian@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Action

Following promulgation of a new or revised NAAQS, EPA is required under CAA section 107(d) to designate areas as attaining or not attaining the NAAQS. Those nonattainment areas are also classified by degree of nonattainment. Under subpart 4 of part D of title I of the CAA, EPA designates areas found to be violating or contributing to violation of the PM_{2.5} NAAQS as nonattainment and classifies them initially as Moderate nonattainment. Effective April 15, 2015, EPA designated Allegheny County, Pennsylvania, as Moderate nonattainment for the 2012 annual PM_{2.5} NAAQS based on ambient monitoring data that showed the area was above the 12.0 micrograms per cubic meter (µg/m³) primary standard for the 2011–2013 monitoring period, based on the area’s design value.¹ A design value (DV) is the 3-year average NAAQS metric that is compared to the NAAQS level to determine when a monitoring site is or is not meeting the NAAQS. The specific methodologies for calculating whether the annual PM_{2.5} NAAQS is met at each eligible monitoring site in an area are found in the Code of Federal Regulations (CFR), at 40 CFR part 50, appendix N, section 4.1.

Sections 179(c)(1) and 188(b)(2) of the CAA require EPA to determine whether a PM_{2.5} nonattainment area attained by the applicable attainment date, “based on the area’s air quality as of the attainment date.” Generally, this determination of whether an area’s air quality meets the PM_{2.5} NAAQS by the attainment date is based upon the most recent three years of complete, certified data gathered at eligible monitoring sites in accordance with 40 CFR 58.9. Section

¹ 80 FR 2206 (January 15, 2015).

188(c)(1) of the CAA requires that states with areas designated as Moderate PM_{2.5} nonattainment areas provide for attainment in the area as expeditiously as practicable, but no later than the end of the sixth calendar year after designation. For areas initially designated under the 2012 annual PM_{2.5} NAAQS, this attainment date was December 31, 2021.²

On February 8, 2023 (88 FR 8249), EPA published a proposed determination that the Allegheny County, Pennsylvania PM_{2.5} nonattainment area attained the 2012 annual PM_{2.5} NAAQS by its December 31, 2021, “Moderate” area attainment date, for the reasons set forth in that proposed rulemaking. EPA’s determination is based upon quality assured, quality controlled, and certified ambient air monitoring data for the 2019–2021 period preceding the December 2021 attainment date. That data is available in EPA’s AQS ambient air quality monitoring database. We explained in our proposed determination that, if finalized, the action would fulfill EPA’s statutory obligation to determine whether the Allegheny County PM_{2.5} nonattainment area attained the NAAQS by the Moderate attainment date. Further explanation of the specific details of and rationale for our determination that the nonattainment area attained the 2012 annual PM_{2.5} NAAQS by the statutory attainment date are explained in the proposed rule and will not be restated here.

EPA received one public comment letter in response to the February 8, 2023, notice of proposed rulemaking (NPRM) that was submitted jointly by three environmental advocacy organizations (The Clean Air Council, The Environmental Integrity Project, and Citizens for Pennsylvania’s Future). A summary of the comments received is set forth below. The full text of the comments is available in the docket for this action.

II. EPA’s Response to Comments Received

Comment: The proposed attainment determination for the Allegheny County PM_{2.5} nonattainment area is a step in the EPA’s process of evaluating whether to approve a subsequent state request for redesignation of the nonattainment area to attainment, per 42 U.S.C.

² 40 CFR 51.1004(a)(1).

7407(d)(3)(E). If EPA finalizes this proposed determination of attainment by the attainment date, the commenters' recommend that EPA not take action on the Commonwealth's November 29, 2022 request under CAA section 107(d)(3)(E) to redesignate the Allegheny County nonattainment area to attainment for the 2012 annual PM_{2.5} NAAQS until EPA finishes its reconsideration of the PM_{2.5} NAAQS set by the 2020 final decision on the primary (i.e., health-based) and secondary (i.e., welfare-based) PM NAAQS.³ EPA published its proposed reconsideration of the December 2020 PM_{2.5} NAAQS on January 27, 2023. The reconsideration proposed revising the primary annual PM_{2.5} standard by lowering the level from 12.0 µg/m³ to within the range of 9.0 to 10.0 µg/m³, while taking comment on alternative annual standard levels as low as 8.0 µg/m³ and up to 11.0 µg/m³.⁴ The commenters state that recent ambient air quality monitoring data obtained since the December 31, 2021, attainment date would likely require EPA to designate the area as nonattainment under the proposed revised annual PM_{2.5} NAAQS, regardless of the final NAAQS level EPA establishes, because all of the proposed NAAQS values in the reconsideration are lower than the 2012 PM_{2.5} annual NAAQS of 12.0 µg/m³. The commenters contend that taking separate action on a redesignation request under the 2012 annual PM_{2.5} NAAQS would be a waste of EPA resources and could endanger public health and welfare in the interim period between any potential redesignation to attainment under the 2012 annual PM_{2.5} NAAQS and potential, future designation under a newly revised PM NAAQS.

Response: EPA thanks the commenters for their considered comments. However, the comments do not provide a reason for EPA to not make a final determination of attainment by the attainment date, for the reasons explained below.

First, EPA's determination whether a nonattainment area has attained the NAAQS by the

³ The final action is EPA's December 2020 final action on its review of the PM NAAQS. This final action retained the primary and secondary PM NAAQS without revision, including the PM_{2.5} annual standard of 12.0 µg/m³. 85 FR 82684 (December 18, 2020).

⁴ Proposed rule titled "Reconsideration of the National Ambient Air Quality Standards for Particulate Matter," 88 FR 5558 (January 27, 2023).

established attainment date is a nondiscretionary, statutory duty placed on EPA by CAA section 179(c)(1), which requires that “as expeditiously as practicable after the applicable attainment date for any nonattainment area, but not later than six months after such date, the Administrator shall determine, based on the area’s air quality as of the attainment date, whether the area attained the standard by that date.” CAA section 188(b)(2) also places a nondiscretionary duty on EPA to determine, within six months following the applicable attainment date for a PM nonattainment area, whether the area attained the standard by that date. A judicial action has been filed by an environmental advocacy organization alleging that EPA has failed to perform this mandatory duty by the June 30, 2022 date required by CAA section 188(b)(2).⁵ EPA is taking final action on the determination of attainment by the attainment date to fulfill a statutory obligation, which is an independent statutory requirement that applies regardless of pending redesignation requests or any revision to the NAAQS.

As such, comments related to Pennsylvania’s November 29, 2022 submission requesting redesignation of the Allegheny County PM_{2.5} nonattainment area to attainment are outside the scope of this action. This determination of attainment by the attainment date satisfies EPA’s obligations under CAA sections 179 and 188 of the CAA to determine, “based on the area’s air quality as of the attainment date,” whether the area attained the standard by that date. EPA’s approval of a state’s request to change the legal designation of an area from nonattainment to attainment for a specific NAAQS is subject to different statutory criteria. See CAA section 107(d)(3)(E).

Similarly, comments regarding air quality monitoring data and their relationship to potential future NAAQS are outside the scope of this action. Under CAA sections 179(c)(1) and 188(b)(2), EPA is making its determination of attainment by the December 31, 2021, Moderate area attainment date based on the area’s ambient air quality monitoring data as of the attainment

⁵ *Center for Biological Diversity, et al., v. Michael S. Regan*, Civil Action No 4:23-cv-00148-JST, (N.D. CA, January 12, 2023).

date.

The PM NAAQS reconsideration is the subject of a separate, proposed EPA action, that took public comment until March 28, 2023. Information with respect to health or welfare impacts of PM or PM precursors at levels below the current NAAQS should have been submitted to the docket for the PM NAAQS reconsideration.⁶

In conclusion, EPA has a nondiscretionary duty to determine whether a Moderate PM_{2.5} nonattainment area has attained by the December 31, 2021, Moderate attainment date. The purpose of this action is to ascertain whether the area attained the 2012 annual PM_{2.5} NAAQS by the Moderate area deadline, and if not, to “bump up” the area to Serious. This determination of attainment by the attainment date is independent of any future EPA action on a state’s request for redesignation of the area to attainment, or from future revision by EPA of the PM NAAQS.

Comment: The commenter contends that air quality monitoring data gathered subsequent to the December 31, 2021, Moderate area attainment date for the Allegheny County nonattainment area shows concerning PM_{2.5} levels (though at monitored levels that do not show a violation of the NAAQS). Further, the commenters express concern that data from the Federal Equivalent Method (FEM) monitor at the Liberty Monitor Site shows significantly higher PM_{2.5} concentrations than data from the Federal Reference Method (FRM) monitor used to determine the 2019–21 design value. Using only data from the Liberty FEM monitor from the 2019 to 2021 period, the commenter claims that the design value calculated using the appendix N methodology would result in an annual PM design value of 12.7 µg/m³, which is above the 2012 annual PM_{2.5} standard of 12.0 µg/m³.

Response: As explained above, section 179(c)(1) of the CAA requires that EPA make this determination “based on the area’s air quality as of the attainment date.” The air quality monitoring data as of December 31, 2021, show that the area attained the NAAQS by that date.

⁶ Reconsideration of the National Ambient Air Quality Standards for Particulate Matter, Proposed Rule (88 FR 5558, January 27, 2023).

Additionally, certified air quality monitoring data in AQS for 2022 (subsequent to the attainment date of December 31, 2021), shows that the area continues to attain the 2012 annual PM_{2.5} NAAQS.

Regarding the claim that data from the FEM collocated with the Liberty FRM shows consistently higher levels of PM than the FRM in the years 2019 through 2021, EPA notes that the methodology for performing the PM_{2.5} design value calculation is set forth at 40 CFR part 50 (National Primary and Secondary Air Quality Standards), appendix N (Interpretation of National Ambient Air Quality Standards for PM_{2.5}), at section 3.0 (Requirements for Data Use and Data Reporting for Comparisons with the NAAQS for PM_{2.5}). The PM_{2.5} FRM monitor is designated as the primary monitor at the Liberty site, with the FEM monitor and a second FRM monitor designated as collocated monitors; therefore, the design value calculation is based on the primary FRM data but shall be augmented with the collocated FEM and FRM data when the primary FRM data is missing.⁷ The purposes of both the Liberty FRMs and the FEM are described in section 10.2 of the Allegheny County Health Department's Air Quality Monitoring Network Plan for 2021,⁸ and these purposes are consistent with the methodology in 40 CFR part 50, appendix N. EPA may not deviate from 40 CFR part 50, appendix N, and Allegheny County's 2021 Air Monitoring Network Plan approved pursuant to 40 CFR 58.10 when calculating the design value for this determination of attainment. Following the methodology in appendix N results in a 2019–2021 PM_{2.5} annual design value for the Liberty monitoring site of 11.2 µg/m³, which is less than the 2012 annual PM_{2.5} NAAQS of 12.0 µg/m³.

III. Final Action

For the reasons discussed in detail in the proposed rulemaking and summarized herein,

⁷ 40 CFR part 50, appendix N, section 3.0(c) provides that, "The default dataset for PM_{2.5} mass concentrations for a site shall consist of the measured concentrations recorded from the designated primary monitor(s)" It is only "[i]f a valid daily value is not produced by the primary monitor for a particular day (scheduled or otherwise), but a value is available from a collocated monitor," that data from the collocated monitor(s) should be used to augment the site's data per 40 CFR part 50, appendix N, section 3.0(d).

⁸ "Air Monitoring Network Plan for Calendar Year 2021," Allegheny County Health Department, July 1, 2020, pp.42-44.

EPA is taking final action under CAA sections 179(c)(1) and 188(b)(2) to determine that the Allegheny County PM_{2.5} nonattainment area attained the 2012 annual PM_{2.5} NAAQS by its December 31, 2021, attainment date. This action fulfills EPA's statutory obligation under CAA sections 179(c)(1) and 188(b)(2) to determine whether the Allegheny County PM_{2.5} nonattainment area attained the NAAQS by the attainment date. This determination does not constitute a redesignation to attainment. The Allegheny PM_{2.5} nonattainment area will remain designated nonattainment for the 2012 annual PM_{2.5} NAAQS until such time as the EPA determines, pursuant to sections 107 and 175A of the CAA, that the Allegheny PM_{2.5} nonattainment area meets the CAA requirements for redesignation to attainment, including an approved maintenance plan showing that the area will continue to meet the standard for 10 years.

IV. Statutory and Executive Order Reviews

A. General Requirements

This rulemaking action constitutes a determination of attainment of the 2012 annual PM_{2.5} NAAQS based on air quality monitoring data and does not impose additional requirements. For that reason, this determination of attainment:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act;

In addition, this determination does not impact any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.” Due to the nature of the action being taken, this action is expected to have neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income

populations, and Indigenous peoples.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final action does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action to determine that the Allegheny County nonattainment area attained the 2012 annual PM_{2.5} NAAQS by its attainment date may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Adam Ortiz,
Regional Administrator,
Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. Amend § 52.2056 by adding paragraph (p) to read as follows:

§ 52.2056 Determinations of attainment.

* * * * *

(p) Based on air quality data for the 3-year period 2019 to 2021, EPA has determined that the Allegheny County nonattainment area attained the 2012 annual fine particulate matter (PM_{2.5}) National Ambient Air Quality Standard (NAAQS) by the applicable attainment date of December 31, 2021. Therefore, EPA has met the requirement pursuant to Clean Air Act (CAA) sections 179(c) and 188(b)(2) to determine, based on the area's air quality as of the attainment date, whether the area attained the standard. The Allegheny County PM_{2.5} nonattainment area is therefore not subject to the consequences for failing to attain, pursuant to CAA section 179(d).